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HAWAIIAN GAZETTE

Supreme Court of the Hawaiian Islands

—April Term, 1874.

Kamohi (K.) vs. Kahale (W).—On exceptions

from opinion of Hartwell, J., January Term,

1873. Jury waived. S. B. Dole for Plaintiff,

excepting; L. McCully for Defendant. ALLEN,

C. J., HARRIS and JUDG, J. J.

Opinion by Mr. Justice JUDG:

This is an action of ejectment for the possession

of a part of a Kuleana of land awarded to

one Hala; and his son, the Plaintiff, claims

to have inherited the land from said Hala, who

died intestate in 1843. The defendant claims

to have inherited the land from said Hala's

younger brother. At the trial the defendant put

in evidence the following facts: That in 1855 a

Patent of the land so awarded was taken out in

the name of Hala and remained in possession of

Koa, who had at one time raised money by a

mortgage on a portion of the land included in

the patent. The Plaintiff Kamohi and Koa,

with their families, lived together on the land

until 1860, when Koa sold the lot in question to

one Wanaoa, the deceased husband of the de-

fendant, under whom she holds as his heir at law.

The sale was made in the presence of the

Plaintiff, and the purchase money was paid by

his active assistance. He counted out the

purchase money for Koa, went with the parties

to the Registrar, and informed the person who

drew the deed of conveyance that Koa had the

title in the land and the right to convey it.

He also pointed out to the surveyor the lot so

purchased, and has never until this suit laid

any claim for the land. Meanwhile the purchaser

erected buildings and made improvements on the

land, and was treated by the plaintiff as his

rightful owner.

The defendant claimed that the above facts

established an equitable estoppel which would

operate to prevent the plaintiff from asserting

his title against her, and that this defence, though

an equitable one, should be received in a court

of law. The court below admitted the evidence

and held that it constituted a bar to the action.

Whereupon the plaintiff excepted. The first

question presented is, are the facts of this case

sufficient to constitute an estoppel?

Estoppels are legal and equitable. Legal

estoppels are such as arise by deed or by matter

of record and their theory is, that they preclude a

party from setting up the real truth of the

transaction even though in furtherance of his

just and equitable rights. Such estoppels have

been called "odious," and courts have required

pleadings asserting them and strict proof in

evidence of them.

Equitable estoppels are such as arise from

the facts of the case; they are often called "estoppels

in pais" or "estoppels by conduct." They

are called equitable estoppels because first

recognized in Courts of Equity, which are courts

of good conscience.

In equity, principles of good faith, of upright

dealing, are applied, and estoppels are used to

prevent a party from taking a dishonest and

unconscientious advantage of his strict legal

rights." See Horn vs. Cole, 51 N. H. 187.

Lord Denham thus defines them in *Pickard* vs.

Sears, 6 Ad. & E. 469. "The rule of law is clear

that where one by his words, or conduct, wilfully

causes another to believe the existence of a cer-

tain state of things, and induces him to act on

that belief, so as to alter his own previous

position, the former is precluded from averring

the latter a different state of things, as existing

at the same time."

In a recent case, decided in December, 1872,

51 N. H. 324, Stevens vs. Dennett, the Court

said: "A party who negligently or culpably

stands by and allows another to contract on the

faith and understanding of a fact which he can

contradict, cannot afterwards dispute that fact

in an action by or against the person whom he

has himself assisted in deceiving." In order to

prevent a party by conduct, there must have been

a representation or concealment of material facts,

known by the party to exist, and with the intention

of inducing a party, ignorant of the facts, to

act upon the representations. Bigelow on estop-

pels, Chap. XIX, p. 480, and cases there cited.

Whether the act or omission shall operate by

way of estoppel or not, must depend upon the

circumstances of each case. Welland Canal Co.

vs. Hathway & Wend, 480, and this is the ques-

tion for the Court. Manning vs. Cogan, 49 N.

H. 331.

Kamohi, the plaintiff, in effect represented to

Wanaoa, (K.) defendant's ancestor, intestate,

that Koa really owned the land and had the

right to sell it, and he induced Wanaoa to buy it,

knowing at the same time that the legal title

was in himself. Therefore it would not be right

or equitable for him to assert the contrary, and

a Court of Equity would not permit him to do so.

It is just the same as if he had told his uncle's

grantee that he would never claim the land then

sold, and the Court would make him keep his

promise. In the case of Stevens vs. Dennett,

above referred to, it was held that "if a party claiming

the right to the use of a well upon premises about

to be conveyed by deed, being present at the

execution of the deed, and understanding its con-

ents, signs the same as a witness thereto and

does not disclose to the purchaser the fact that

he had any claim to the well, and if the pur-

chaser being ignorant of the well's claim, would

not have purchased if he had known thereof,

the party will not be permitted, in an action against

the purchaser, to set up his claim to the use of

the well, even though his omission to disclose the

same was only an act of gross negligence, and not

of bad faith."